

Ordinance No. 167-13

Council Members Conwell, Polensek, Brancatelli,
Dow, Cummins, Westbrook, Keane, K. Johnson,
Cleveland, Pruitt

AN EMERGENCY ORDINANCE

To amend Sections 605.11, 621.03, and 623.10 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by various ordinances, relating to offenses and misconduct involving a public transportation system and against a public transportation worker.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:.

Section 1. That Section 605.11, as amended by Ordinance No. 411-09 passed April 13, 2009, Section 621.03 as amended by Ordinance No. 995-2000, passed December 4, 2000, Section 623.10 as amended by Ordinance No. 243-12, passed April 23, 2012 are hereby amended to read, respectively, as follows:

Section 605.11 Misconduct Involving a Public Transportation System

(a) No person shall evade the payment of the known fares of a public transportation system.

(b) No person shall alter any transfer, pass, ticket, or token of a public transportation system with the purpose of evading the payment of fares or of defrauding the system.

(c) No person shall do any of the following while in any facility or on any vehicle of a public transportation system:

(1) Play sound equipment without the proper use of a private earphone;

(2) Smoke, eat, or drink in any area where the activity is clearly marked as being prohibited; and

(3) Expectorate upon a person, facility or vehicle.

(d) No person shall fail to comply with a lawful order of a public transportation system police officer, and no person shall resist, obstruct, or abuse a public transportation system police officer in the performance of the officer's duties.

(e) No person, without privilege to do so, and while on a public transportation system vehicle, shall negligently fail or refuse to leave such vehicle upon being notified to do so by the operator, driver, or an authorized agent of the public transportation system. (RC 2917.41)

(f) No person shall throw a rock, stone, bottle, missile, projectile, snowball or other hard substance at, within or from a public transportation system vehicle.

(g) Whoever violates division (f) of this section is guilty of a misdemeanor of the second degree. If violation of division (f) of this section creates a risk of physical harm to any person, such violation is a misdemeanor of the first degree.

(h) Whoever violates divisions (a), (b), (c), (d) or (e) of this section is guilty of a minor misdemeanor on the first offense and a misdemeanor of the fourth degree on the second and any subsequent offense.

Section 621.03 Assault

(a) No person shall knowingly cause or attempt to cause physical harm to another.

(b) No person shall recklessly cause serious physical harm to another.

(c) Whoever violates this section is guilty of assault, a misdemeanor of the first degree.

(d) Notwithstanding the provisions of division (c) of this section, if the sentencing court determines that the victim of the offense was any of the following:

(1) An official or employee of the Cleveland City School District or the City of Cleveland; or

(2) A member of the City's Auxiliary Police Force; or

(3) A school crossing guard or his or her alternate; or

(4) A volunteer working on school property, whether public or private, or at a City-owned recreation center;

(5) A taxicab driver licensed under Chapter 443 of the Codified Ordinances; or

(6) A Regional Transit Authority worker, driver or operator or any other public transportation system worker, driver or operator.

and the court further determines that the victim was performing his or her official duties at the time of the offense, the court shall set the offender's fine at one thousand dollars (\$1,000.00) and

in addition to said fine shall sentence the offender to not less than sixty (60) days' and not more than six (6) months' imprisonment. The minimum fine and imprisonment to be imposed by the court pursuant to this division (d) are mandatory. The court shall not suspend all or any portion of said fines and imprisonment.

(e) Notwithstanding the provisions of division (c) of this section, if the sentencing court determines that the victim of the offense was a child between the ages of six (6) and seventeen (17) and was in attendance in a facility owned by the Cleveland City School District at the time of the offense, the court shall set the offender's fine at one thousand dollars (\$1,000.00) and, in addition to said fine, shall sentence the offender to not less than sixty (60) days' and not more than six (6) months' imprisonment. The minimum fine and imprisonment to be imposed by the court pursuant to this division (d) are mandatory. The court shall not suspend all or any portion of said fines and imprisonment.

(f) This section does not apply where the offense constitutes a felony pursuant to RC 2903.13.

Section 623.10 Spray Painting Property

(a) No person shall intentionally, maliciously or recklessly destroy, damage or deface in any way any public or private property by the use of spray paint or any other paint or any other similar substance. Public or private property shall include, but not be limited to, the following:

(1) Public or private buildings, including sidewalks about such grounds and all appurtenances thereto, fences or trees;

(2) Public street lights, fire hydrants, pumps, fountains, inlets, manholes or sewer ventilators, waste containers and noise walls;

(3) Telephone or telegraph wires or electric wires of any kind or the poles sustaining or attaching thereto;

(4) Statues, monuments or plaques;

(5) Official notices or signs posted by the State, the City or any other public agency;

(6) Any property, including vehicles, seats, equipment, buildings, and bus stops owned by the Regional Transit Authority or any other public transportation system.

(b) (1) Whoever violates this section is guilty of spray painting property, a misdemeanor of the first degree.

(2) In addition to any other penalty imposed, as a separate and independent penalty, whoever violates this section shall be ordered to either, (i) make restitution by monetary payment for the loss or damage incurred on the property at that location where the offender committed the violation or, (ii) at his or her own cost, remove the spray paint from the property at that location where the offender committed the violation and to restore by physical labor the property to its former condition; and, also at his or her own cost, to perform one hundred (100) hours of community service removing spray paint from other public or private property.

Section 2. That existing Section 605.11, as amended by Ordinance No. 411-09 passed April 13, 2009, Section 621.03 as amended by Ordinance No. 995-2000, passed December 4, 2000, Section 623.10 as amended by Ordinance No. 243-12, passed April 23, 2012 are hereby repealed.

Section 3. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.